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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15

16 STATE OF CALIFORNIA, ex rel BILL
17 LOCKYER,

18 Plaintiff,

19 v.

20 THE VONS COMPANIES, INC.

21 Defendant.
22

Case No.

**CONSENT DECREE AND
FINAL JUDGMENT**

23 **I.**

24 **PARTIES AND BACKGROUND**

25 Plaintiff, the State of California, has filed a Complaint, alleging violations of
26 Section 7 of the Clayton Act as amended, (15 U.S.C. § 18). Defendant The Vons
27 Companies, Inc. (“Vons”) by and through its attorneys, has reviewed this
28 Complaint and consented to the entry of this Consent Decree and Final Judgment

1 (“Consent Decree”) without trial or adjudication of any issue of fact or law herein
2 and has waived notice of presentation of this Consent Decree, Complaint, and
3 service of summons. This Consent Decree does not constitute any evidence
4 against or an admission by any party with respect to any issue of law or fact herein.

5 Santa Catalina Island Company (“SCICo”), as a Settling Third Party Lessor,
6 consents to the entry of those Consent Decree provisions applicable to it without
7 the filing of a complaint against it, the trial or adjudication of any issue of law or
8 fact herein, and has waived the filing of a Complaint against it as well as notice of
9 the presentation of this Consent Decree and service of summons. It has reviewed
10 the Complaint on file in this case.

11 Vons has owned and operated a grocery store located at 123 Metropole, in
12 the City of Avalon from at least 1987.

13 Prior to 1999, there was a second grocery store, known as Fred & Sally’s,
14 that was independently operated on a site leased from SCICo at 117-119 Catalina
15 Avenue in the City of Avalon (the “Property”).

16 On or around March 1, 1999, SCICo offered the lease for the Fred & Sally’s
17 grocery store, located on the Property, to Vons who accepted the offer and leased
18 the Property, renaming it “Vons Express.”

19 SCICo and Vons renewed the lease on an annual basis until December 31,
20 2004, and, as of January 1, 2005, have continued to renew the lease on a
21 month-to-month basis.

22 The State of California, through its Attorney General, has alleged that this
23 lease constitutes an “acquisition” within the meaning of section 7 of the Clayton
24 Act and is unlawful under that statute.

25 The State of California contends that Vons should be required to agree to
26 certain procedures, prohibitions, transfer of assets, and surrender of the lease and
27 premises of the Property for the purpose of rectifying the loss of competition
28 alleged in the Complaint.

1 Vons does not admit and continues to deny that the law has been violated as
2 alleged in the Complaint, or that the facts as alleged in this Complaint, other than
3 jurisdictional facts, are true.

4 The State of California also contends that SCICo should be required to agree
5 to certain procedures regarding the lease of the Property to a new, independent,
6 grocery store operator also for the purpose of restoring the seven-year loss of
7 competition from the lease of the Property to Vons alleged in the Complaint.

8 SCICo does not admit and continues to deny that this transaction, the lease
9 of the Property to Vons, is unlawful and asserts that it has not violated any law
10 with respect to the subject matter of the Consent Decree.

11 The State of California, Vons, and SCICo, wish to avoid litigation and to
12 resolve this controversy on mutually acceptable terms.

13 After being notified of the provisions of this Consent Decree, Vons and
14 SCICo have agreed to be bound by the Consent Decree and there is no just reason
15 for delay in its entry. SCICo has also agreed not to challenge this Court's
16 jurisdiction to enter and enforce it.

17 Insofar as Vons is concerned, the divestiture of certain assets forms the
18 essence of this agreement and the parties intend that Vons divest itself of these
19 assets within the time prescribed by Paragraph V(A) herein if SCICo finds a New
20 Tenant as that term is defined herein; the State of California intends to require
21 Vons to attempt to divest these assets, including the lease of the Property, upon the
22 occurrence of the conditions set forth herein, so that the site can be operated as a
23 competitive, viable and ongoing grocery store; and Vons has represented to the
24 State of California that it can comply with the obligations set forth in this Consent
25 Decree.

26 Insofar as SCICo is concerned, the lease of the Property to a new,
27 independent, and viable grocery store operator under certain procedures and
28 conditions, if such an operator can be found by SCICo, forms the essence of this

1 agreement; the State of California requires SCICo to lease the Property under
2 certain procedures and conditions set forth herein so that the Property can be
3 maintained as a competitive, viable, and ongoing grocery store; and SCICo has
4 represented to the State of California that it can comply with the procedures
5 required below.

6 NOW, THEREFORE, before the taking of any testimony, and without trial
7 or adjudication of any issue of fact or law herein, and upon consent of the State of
8 California, Vons, and SCICo hereto, it is hereby

9 ORDERED, ADJUDGED, AND DECREED as follows:

10 **II.**

11 **JURISDICTION**

12 This Court has jurisdiction over the subject matter of this action and over
13 each of the parties hereto. The Complaint states a claim upon which relief may be
14 granted against the Defendant under section 7 of the Clayton Act (15 U.S.C. § 18).
15 The Attorney General for the State of California, Bill Lockyer, has authority to
16 bring this action on behalf of the State of California in its sovereign capacity
17 pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26). Although section 7 of
18 the Clayton Act expressly proscribes only the act of acquiring or accepting a lease,
19 not selling or offering a lease, the courts can, when the interests of justice require
20 it, summon third parties before the court to fashion appropriate relief. Accordingly,
21 this Court has personal and subject matter jurisdiction over the Settling Third Party
22 Lessor, SCICo. This Court also finds that the Settling Third Party Lessor has
23 agreed the terms of this Consent Decree applicable to it and has agreed not to
24 challenge this Court's jurisdiction to enter and enforce it.

25 ///

26 ///

27 **III.**

28 **DEFINITIONS**

1 As used in this Consent Decree:

2 A. "Approved List" means the notice supplied by SCICo of Prospective
3 New Tenants pursuant to Paragraph VI (F) of the Consent Decree and approved, by
4 the Attorney General pursuant to that paragraph, as well as any Prospective New
5 Tenants identified by the Attorney General in accordance with the procedures
6 detailed in Paragraph VI(F) of this Consent Decree and subject to Court review.

7 B. "Assets" means the leasehold interest of Vons in the Property, any
8 and all Fixtures and Equipment contained therein as set out in Paragraph III(G)
9 below, and the Liquor License.

10 C. "Attorney General" means the Attorney General of the State of
11 California.

12 D. "Candidate New Tenant" means a person or entity which is interested
13 in leasing the Property for use as a Grocery Store, which has so informed Vons of
14 that interest, and which has been specifically designated in writing as a person or
15 entity which is interested in leasing the Property (e-mail, facsimile, or first class
16 mail all being acceptable as a means of effectuating such a designation) by either
17 SCICo or the Attorney General.

18 E. "CPI-U" means the Consumer Price Index (CPI – U, 1982-84 = 100)
19 for the Los Angeles – Anaheim – Riverside metropolitan area published by the
20 United States Department of Labor, Bureau of Labor Statistics. If the Index is
21 discontinued, a comparable Index shall be chosen by SCICo subject to the approval
22 of the Attorney General. If the base period of the Index is changed, the conversion
23 factor published by the United States government shall be used to make the
24 necessary adjustment.

25 F. "Divestiture" means the return or surrender of the leasehold interest in
26 Vons Express by Vons to SCICo for use by the New Tenant, as well as the transfer
27 of the Fixtures and Equipment and Liquor License to the New Tenant.

28 G. "Fixtures and Equipment " means the items delineated in Exhibit A,

1 and which for purposes of this Consent Decree are valued by Vons and the
2 Attorney General at the aggregate sum of \$20,000.

3 H. "Grocery Store" means a full-line retail store that carries a wide
4 variety of food and drink items in standard consumer sizes in particular product
5 categories, including bakery goods, dairy products, refrigerated and frozen foods
6 and beverages, fresh and prepared meats and poultry, produce, beverages,
7 shelf-stable foods, stable food stuffs (such as flour, sugar, coffee, and tea) and
8 non-food grocery items in standard consumer sizes in particular product categories
9 (such as soaps, detergent, child care items, paper goods, and health and beauty
10 aids).

11 I. "Lease" means the document attached hereto as Exhibit B.

12 J. "Liquor License" means the alcoholic beverage license associated
13 with the Vons Express at 117-119 Catalina Avenue in the City of Avalon on Santa
14 Catalina Island, Alcoholic Beverage License Number 21-358292, attached hereto
15 as Exhibit C, which, for purposes of this Consent Decree, is valued by Vons and
16 the Attorney General in the sum of \$20,000.

17 K. "New Tenant" means a person or entity that, with the prior approval
18 of the Attorney General, takes tenancy from SCICo of the Property for use as a
19 Grocery Store under the terms of this Consent Decree at any point within a six
20 month period following entry of this Consent Decree.

21 L. "Prospective New Tenant" means a person or entity which is
22 interested in leasing the Property for use as a Grocery Store

23 M. "SCICo" means the Santa Catalina Island Company.

24 N. "Search Period" means the period of time set forth in Paragraph VI(E)
25 of this Consent Decree.

26 O. "Substantially Continuous" means being physically present at the
27 Vons Express for more than fifty percent (50%) of the time the store is required by
28 the Lease to be open for business.

1 P. "Vons" means The Vons Companies, Inc., a Michigan corporation,
2 with its principal place of business located at 618 Michillinda Avenue, Arcadia,
3 California 91007-1734.

4 Q. "Property" means the property, currently known as the "Vons
5 Express" store, located at 117-119 Catalina Avenue, in the City of Avalon on Santa
6 Catalina Island.

7 R. "Vons Metropole" means the store located at 123 Metropole, in the
8 City of Avalon on Santa Catalina Island.

9 IV.

10 APPLICABILITY

11 A. The provisions of this Consent Decree apply to Vons and SCICo, their
12 successors and assigns, subsidiaries, affiliates, directors, officers, managers,
13 agents, and employees, and all other persons in active concert or participation with
14 any of them who have received actual notice of this Consent Decree by personal
15 service or otherwise.

16 B. Vons shall require, as a condition of the sale or other disposition of
17 Vons Metropole, that the purchaser agrees to be bound by the provisions of
18 Paragraphs V(H) and V(I) of this Consent Decree.

19 C. SCICo shall require, as a condition for the sale or other disposition of
20 the Property, that the purchaser thereof agrees to be bound by the provisions of this
21 Consent Decree.

22 D. Entry of this Consent Decree does not constitute a trial or an
23 adjudication of any issue of fact or law, any evidence against, or any admission by,
24 the State of California, Vons, or SCICo regarding any such issue of fact or law.

25 E. Nothing in this Consent Decree creates any rights for any parties other
26 than the Attorney General, SCICo, and Vons.

27 V.

28 VONS'S OBLIGATIONS

Vons Express (“Property”)

A. Vons is directed to continue to operate the Property in a commercially reasonable manner consistent with its past practice for a period of six (6) months from the entry of this Consent Decree, or until Vons vacates the Property following the issuance of a Thirty Day Notice to Quit by SCICo, whichever is sooner.

B. For a period of six (6) months from the entry of this Consent Decree or until Vons vacates the Property following the issuance of a Thirty Day Notice to Quit from SCICo, whichever is sooner, Vons shall maintain the viability, marketability and competitiveness of the Property in a commercially reasonable manner consistent with its past practice and shall not cause the wasting or deterioration of the Property, nor shall it cause the Property to be operated in a manner inconsistent with applicable laws, nor shall it sell, transfer, encumber or otherwise impair the viability, marketability, or competitiveness of the Assets. Vons shall conduct or cause to be conducted the business of the Property in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use reasonable commercial efforts to preserve existing relationships with third party suppliers, customers, employees, and others having business relations with the Property, in the ordinary course of the Property’s business and in accordance with past practice. Vons shall continue to maintain the inventory of the Property at levels and selection (e.g., stock keeping units) consistent with those maintained by Vons at the Property in the ordinary course of business, consistent with past practice. Vons shall use reasonable commercial efforts to keep business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Property. Included in the above obligations, Vons shall, without limitation:

(1) maintain operations and departments and not reduce hours at the Property in accordance with reasonable commercial practices and consistent with

1 past practices;

2 (2) not transfer inventory from the Property other than in the regular
3 course of business consistent with past practice;

4 (3) maintain the books and records for the Property to the extent any exist
5 in accordance with reasonable commercial practices and consistent with past
6 practices;

7 (4) make any payment required to be paid under any contract or lease
8 when due, and otherwise pay all liabilities and satisfy all obligations in a manner
9 consistent with past practice;

10 (5) not display any signs or conduct any advertising (e.g., direct mailing,
11 point-of-purchase coupons) that indicates that Vons is vacating the Property;

12 (6) not conduct any "going out of business," "close out," "liquidation," or
13 similar sales or promotions at or relating to the Property; and

14 (7) not change or modify in any material respect the existing advertising
15 practices, programs and policies for the Property, other than changes in the
16 ordinary course of business.

17 C. Vons shall vacate the Property by the date stated in a Thirty Day
18 Notice to Quit to be given by SCICo upon execution of the Lease with the New
19 Tenant, which date shall not be less than thirty (30) calendar days after the Thirty
20 Day Notice to Quit is given to Vons. Vons agrees that when it vacates the
21 Property, it will leave the Property in the condition required pursuant to its lease
22 agreement with SCICo and the provisions of this Consent Decree regarding
23 Fixtures and Equipment.

24 D. Vons shall permit any Candidate New Tenant to have access to
25 specifically-prepared financial documents for the Property, broken down by
26 quarter, from the first quarter of 2003 to the last quarter of 2005, as well as a
27 specifically-prepared annual financial statement for the year 2002, in accordance
28 with a methodology separately agreed to between itself and the Attorney General,

1 subject to Vons' right to have a Candidate New Tenant sign the confidentiality
2 agreement approved by the Attorney General and attached hereto as Exhibit D.

3 E. Vons shall permit any such Candidate New Tenant to conduct an
4 inspection of the physical facilities upon reasonable notice, at a reasonable time,
5 and for a reasonable duration.

6 F. Vons shall not remove any Fixtures or Equipment from the Property
7 for a six (6) month period following entry of this Consent Decree; if a New Tenant
8 is found, ownership of said Fixtures and Equipment shall be transferred to SCICo,
9 at no cost to either SCICo or, if SCICo so elects, to the New Tenant of the
10 Property, for use by the New Tenant or any successors to the lease of the Property.
11 If a New Tenant is not found, Vons will retain ownership of said Fixtures and
12 Equipment.

13 G. Vons shall take all steps necessary for it to transfer the Liquor License
14 associated with the Property to the New Tenant of the Property, including, but not
15 limited to, selecting an escrow agent to enable the transfer of the Liquor License.
16 The New Tenant shall be required to pay all transaction and inventory fees and
17 costs associated with the transfer of the Liquor License, including, but not limited
18 to, transfer fees, registration fees, inventory-related charges and fees, and escrow
19 fees, up to a maximum of \$2,750.00 exclusive of inventory-related charges or fees.
20 All other transaction, registration, and escrow costs or fees above \$2,750.00 shall
21 be borne by Vons with the exception of inventory-related charges or fees. If a New
22 Tenant has not been found within fifteen (15) days after Vons has vacated the Vons
23 Express in accordance with Paragraph V(A) of this Consent Decree upon the
24 expiration of the six (6) month period set out therein, then Vons shall surrender the
25 Liquor License in accordance with state law to the California Department of
26 Alcoholic Beverage Control ("ABC") in lieu of transferring it to the New Tenant;
27 however Vons shall not seek reinstatement of said Liquor License with the ABC
28 unless SCICo has exhausted the Approved List and has been unable to obtain a

1 signed lease with a Prospective New Tenant on that List. If a New Tenant is not
2 found, Vons will retain ownership of the Liquor License or, in the event that it has
3 already surrendered the Liquor License pursuant to the provisions of this
4 paragraph, it may seek reinstatement of said Liquor License.

5 **Vons Metropole**

6 H. If Divestiture occurs, Vons shall notify its employees that, in the
7 course and scope of their employment, they are not authorized to and shall not
8 illegally interfere with the negotiation or establishment of relations between the
9 New Tenant and any cash-and-carry business, restaurant, or shipping/freight
10 company, doing business with or located on Santa Catalina Island, for the
11 shipment, sale and/or storage of Grocery Store products by the New Tenant. For a
12 period of two (2) years, Vons shall post this notice in a prominent and visible
13 position in its Metropole Store in any area where it posts messages, directives, and
14 requirements to employees from Vons management. Provided however that this
15 language shall not be construed to apply to any activities conducted or directed by
16 any labor unions representing Vons employees even if said activities involve those
17 employees.

18 I. Vons will not close or otherwise dispose of the Metropole Store
19 within the six (6) month period referenced in Paragraph V(A) (Vons Express),
20 above. It warrants that it has no intention as of the date of signing of this Consent
21 Decree of closing down or otherwise disposing of the Metropole Store, even after
22 the six (6) month period referenced in Paragraph V(A) (Vons Express), above
23 expires.

24 J. For a period of five (5) years from the date of entry of the Consent
25 Decree, Vons shall not place a restrictive covenant or any similar provision in the
26 deed for the Metropole Store property or in any contract for sale or lease of the
27 Metropole Store, which would prevent such store from being used as a Grocery
28 Store by any purchaser, acquirer, or lessee of that property unless there are two or

1 more other Grocery Stores doing business in the City of Avalon at that time.

2 **Other**

3 K. Vons shall contribute the sum of \$60,000 payable to the City of
4 Avalon within 15 days of the date of entry of the Consent Decree to be used for the
5 benefit of consumers who purchased Grocery Store products in Avalon.

6 L. Vons shall pay to the Attorney General, within 15 days of the date of
7 entry of the Consent Decree, the sum of \$25,000 for reimbursement of
8 investigatory costs.

9 M. For the purpose of determining or securing compliance with this
10 Consent Decree, and subject to any legally recognized privilege, and upon written
11 request with reasonable notice to Vons, Vons shall permit any duly authorized
12 representative of the Attorney General access, during office hours and in the
13 presence of counsel, to all facilities and access to inspect and copy all books,
14 ledgers, accounts, correspondence, memoranda, and all other records and
15 documents in the possession or under the control of Vons related to compliance
16 with this Consent Decree.

17 N. On five (5) days' notice to Vons, Plaintiff shall, without restraint or
18 interference from Vons, be permitted to interview officers, directors, or employees
19 of Vons, who may have counsel present, regarding compliance with this Consent
20 Decree.

21 **Termination**

22 O. Unless specified by other provisions herein, this Consent Decree will
23 expire and terminate with regard to Vons five (5) years from the date of its entry
24 unless a New Tenant has not been found within the six (6) month period referenced
25 in Paragraph V(A) (Vons Express), above. If a New Tenant has not been found
26 within the six (6) month period referenced in Paragraph V(A) (Vons Express),
27 above, then all provisions of this Consent Decree addressed to Vons shall terminate
28 immediately with the exception of Paragraphs V(F) and (G) (Vons Express) which

1 will terminate when, either a New Tenant has been found and the provisions
2 contained in those paragraphs have been carried out, or when SCICo has exhausted
3 the Approved List but has been unable to obtain a signed lease with a Prospective
4 New Tenant on that List, Paragraphs V(I) and (J) (Vons Metropole), and V(K)-(O),
5 all of which will terminate five (5) years from the date of entry of the Consent
6 Decree, and Paragraphs VII-IX of the Consent Decree, which will terminate five
7 (5) years from the date of entry of the Consent Decree insofar as Vons is
8 concerned.

9 VI.

10 **SCICo'S OBLIGATIONS**

11 **Process for Finding a New Tenant to Lease the Property**

12 A. SCICo will commence the search for a third party lessee, the New
13 Tenant, to operate a Grocery Store on the Property in accordance with the
14 provisions of this Consent Decree promptly upon receipt of written notice from the
15 Attorney General to proceed; said notice cannot be issued until after the entry of
16 this Consent Decree.

17 B. SCICo will hire a commercial real estate broker at its own expense to
18 search for a New Tenant. SCICo will pay all of the expenses related to use of such
19 a commercial real estate broker, including the commission.

20 C. SCICo will place one advertisement each week for six (6) consecutive
21 weeks, or until a lease or letter of intent to lease is signed with a New Tenant,
22 whichever occurs first, in the Los Angeles Times, the Orange County Register, the
23 Long Beach Press-Telegram, the Catalina Islander, the California Centers trade
24 publication, and La Opinion at its own expense in the commercial real estate
25 section or its equivalent of each newspaper stating that the Property is now
26 available to be leased for use as a Grocery Store. SCICo, however, is under no
27 obligation to undertake such advertisement if the commercial real estate broker
28 hired by it does so at the broker's own expense.

1 D. The Attorney General may provide information to SCICo on contacts
2 that may reasonably lead to the discovery of New Tenants or on New Tenants
3 whom the Attorney General has reason to believe meet the New Tenant
4 qualification requirements set forth in Paragraphs VI(Q)(1)-(6) of this Consent
5 Decree. SCICo will make good faith efforts to follow-up on this information in a
6 reasonable and prompt manner.

7 E. SCICo shall be required to devote up to, but no more than, four (4)
8 months from the date of the Attorney General's notice to proceed under Paragraph
9 VI(A) of this Consent Decree to a search for a New Tenant of the Property
10 ("Search Period"). SCICo will give the Attorney General a report every 30 days
11 on its efforts in finding a New Tenant. Said reports will include the names and
12 relevant contact information of any individuals SCICo or its broker have contacted
13 and/or who have contacted them regarding a lease of the Property; whether SCICo
14 or its broker has engaged in any follow-up with each such individual regarding a
15 lease and his/her qualifications and if not, why not; the status of any such
16 follow-up; and the nature and substance of any communications between SCICo
17 and said individuals. The Attorney General may contact, at any point in time, the
18 commercial real estate broker whom SCICo will hire to ascertain the status of the
19 broker's efforts to find a New Tenant; for these purposes, SCICo waives any
20 confidentiality rights and/or privileges it may have in the information gathered by
21 itself or its broker.

22 F. Not less than forty-five (45) days prior to the expiration of the Search
23 Period, SCICo will identify, by written notice to the Attorney General, every
24 Prospective New Tenant who has expressed interest to SCICo or its broker in
25 leasing the Property, and who, in SCICo's opinion, meets the minimum
26 qualification requirements of Paragraphs VI (Q)(1)-(6). The notice will provide
27 contact information for each Prospective New Tenant and will set forth SCICo's
28 order of preference with respect to the listed Prospective New Tenants. The

1 Attorney General shall have the right to disapprove any one or more of the listed
2 Prospective New Tenants (including, pursuant to Paragraph VI(N)(4)(a)-(d) of this
3 Consent Decree, the designated member subtenant or sublessee of a Prospective
4 New Tenant which is a co-operative or company comprised of entities or persons
5 who independently own and/or operate grocery stores), in the reasonable exercise
6 of its discretion. In addition, if SCICo's notice states that none of the Prospective
7 New Tenants meets the minimum qualification requirements in Paragraphs
8 VI(Q)(1)-(6) of this Consent Decree in SCICo's opinion, the Attorney General
9 shall have the right to identify any Prospective New Tenants whom the Attorney
10 General believes were wrongly rejected by SCICo and who will agree to the Lease
11 provisions set out in Paragraphs VI(K)-(P) of this Consent Decree. Any
12 unresolved disagreement concerning the qualifications of a Prospective New
13 Tenant so identified by the Attorney General shall be submitted to the Court for
14 resolution. Provided SCICo has provided its list of Prospective New Tenants to
15 the Attorney General within the time required, the Attorney General shall act on
16 such list in a timely manner such that an Approved List will be arrived at prior to
17 the expiration of the Search Period.

18 G. SCICo shall offer to enter into a Lease of the Property, using the
19 proposed Lease attached hereto as Exhibit B, with any Prospective New Tenant
20 that it selects from the Approved List. The offer shall be made by SCICo's
21 sending the proposed Lease to the selected Prospective New Tenant via overnight
22 mail, executed by SCICo, with instructions as to when the offer will expire and
23 how the offer may be accepted in accordance with the provisions of this Consent
24 Decree. The Prospective New Tenant shall be afforded ten (10) days to accept the
25 offer by signing and returning the lease to SCICo together with a check for the first
26 month's rent and security deposit unless the Prospective New Tenant falls within
27 one of the exceptions set out in Paragraph VI(N)(3) of this Consent Decree in
28 which case a greater security deposit may be required. If the Prospective New

1 Tenant fails to accept the offer in a timely manner, SCICo shall make an offer, in
2 the manner stated above, to another Prospective New Tenant on the Approved List
3 and this process shall be repeated until an offer to lease is accepted in a timely
4 manner or all Prospective New Tenants on the Approved List have failed to accept
5 SCICo's offer to lease in a timely manner, whichever occurs first.

6 H. The requirement of acceptance of the proposed Lease, as set forth in
7 Paragraphs VI(F) and (G) of this Consent Decree, shall not be interpreted to bar
8 good faith negotiations between SCICo and Prospective New Tenants on the hours
9 of operation; and the types of merchandise that can be sold consistent with a
10 Grocery Store lease. Furthermore, the requirement of acceptance of the proposed
11 Lease shall not also be interpreted to bar Prospective New Tenants from suggesting
12 reasonable changes to the lease; however, SCICo is under no obligation to
13 negotiate on or accept said suggestions.

14 I. Upon full execution of the Lease with the New Tenant, SCICo will
15 give Vons the Thirty Day Notice to Quit the Property.

16 J. If the Approved List has been exhausted and a Lease has not been
17 executed in a timely manner, or if there is no Approved List, and provided SCICo
18 has fulfilled its obligations under this Consent Decree with respect to the search
19 for, and offer to lease to, a New Tenant, this Consent Decree shall be terminated as
20 to SCICo, and SCICo's use of the Property shall be free of any restrictions under
21 this Consent Decree.

22 **Lease Provisions Applicable to the New Tenant**

23 K. The rent charged to the New Tenant of the Property shall be \$7,232.00
24 per month, increasing each year commencing January 1, 2007, by the percentage
25 increase in the CPI-U. For the last year of the Lease, the rent can be increased up
26 to 20% over the previous year.

27 L. The Lease term shall commence on the first day of the first month
28 after an offer to lease is accepted by the New Tenant or on such date as Vons

1 vacates the Property, whichever occurs later, and shall end on the earlier of six (6)
2 years after commencement or on April 30, 2012, unless sooner terminated in
3 accordance with the Lease provisions. SCICo may require that the New Tenant be
4 open for business no later than ninety (90) days after the commencement date of
5 the Lease.

6 M. SCICo shall make available to the New Tenant for its use, without
7 additional charge, all Fixtures and Equipment that Vons conveys to SCICo at the
8 time Vons vacates the Property. Insofar as any additional fixtures and equipment
9 on the Property are actually owned by SCICo by virtue of its purchase of said
10 fixtures and equipment from former tenants (excluding Vons) of the Property,
11 SCICo will provide use of these items at no charge to the New Tenant.

12 N. The following lease provisions apply to the selection process
13 involving a New Tenant:

14 (1) With the exceptions set out in Paragraph VI(H) above regarding those
15 provisions that are subject to negotiation between SCICo and the New Tenant,
16 SCICo must offer, for execution by the New Tenant, the proposed Lease as set
17 forth in Exhibit B to this Consent Decree or such other form of Lease as has been
18 approved by the Attorney General;

19 (2) At the time that the offer to lease is accepted by the New Tenant
20 through the execution of the proposed Lease as modified through any negotiations
21 that occurred pursuant to Paragraph VI(H) of this Consent Decree (no other means
22 for acceptance of the offer being permitted), then SCICo can only demand one
23 month's advance rent plus a security deposit equal to one (1) month's rent from a
24 New Tenant, subject to the exception set out in Paragraph VI(N)(3) of this Consent
25 Decree;

26 (3) If the New Tenant is a limited liability entity, then SCICo can require
27 the Lease obligations to be guaranteed by the principals of that entity by their
28 executing a guaranty agreement as attached as Exhibit E to this Consent Decree, or

1 such other from of guaranty as has been approved by the Attorney General, unless
2 (a) the New Tenant has a verified net worth equal to the amount called for by
3 Paragraph VI(Q)(4)(a)-(d) of this Consent Decree and posts a security deposit
4 equal to six months' rent or (b) the New Tenant has a verified net worth of \$1
5 million or more. If the New Tenant has a verified net worth of \$1 million or more,
6 then SCICo may only require it to put up one month's security deposit;

7 (4) If a New Tenant is a company or co-operative comprised of members
8 who independently own and/or operate grocery stores, then the following
9 provisions apply to that New Tenant:

10 (a) SCICo can require such a New Tenant to disclose the identity
11 of the member who will be the subtenant or sublessee on the Lease prior to the
12 execution of the proposed Lease;

13 (b) SCICo can require the member so identified to meet the
14 qualification requirements set forth in Paragraphs VI(Q)(1)-(6) of this Consent
15 Decree;

16 (c) SCICo must allow such a New Tenant to exercise, as a matter
17 of right, one (1) assignment or sublease of the Lease in order to assign or sublease
18 the Property to the member so identified; and

19 (d) SCICo may require the member so identified to comply with
20 those provisions of this Consent Decree applicable to the New Tenant of the
21 Property as if it were the New Tenant itself.

22 O. SCICo may require that the Grocery Store on the Property be
23 managed on a Substantially Continuous basis by person(s), whether owner(s) of
24 the New Tenant and/or employee(s) having at least five (5) years combined
25 experience as an owner/operator and/or manager of a Grocery Store, supermarket,
26 convenience store, cash and carry business or liquor store; provided that in the
27 event of the death, illness or termination of the manager or owner with the requisite
28 experience, the New Tenant shall have ninety (90) days to replace the former

1 manager or owner with a new manager or owner having the requisite experience,
2 failing which SCICo shall have the right to terminate the Lease. This provision
3 shall not be interpreted by SCICo so as to preclude the New Tenant from
4 promoting an employee with the requisite experience to the manager position
5 referenced in this paragraph.

6 P. If SCICo desires to develop the Property during the Lease term and
7 has filed and received approval of an application for a local coastal plan or a
8 California Coastal Commission approval, a general plan amendment, a specific
9 plan approval, and a zoning change, as may be necessary, SCICo shall have the
10 right to relocate the New Tenant, at SCICo's expense, to a location substantially
11 equivalent to or superior to the Property, provided that either (1) the relocation
12 does not necessitate the interruption of the New Tenant's business for more than
13 three (3) days or (2) if the New Tenant's business will necessarily be interrupted
14 for more than three (3) days, then SCICo will promptly pay the New Tenant the
15 sum of \$2,000 per diem for the fourth and each subsequent day that the New
16 Tenant was unable to conduct business at the new location with the understanding
17 that the interruption shall not last longer than seven (7) days. No rent will be due
18 for any period of interruption of the New Tenant's business, but no compensation
19 shall be due the New Tenant for any lost profits during the first (3) days period
20 with the exception of the per diem payment set out above if the interruption lasts
21 more than (3) days but less than seven (7) days: SCICo must apply the Lease terms
22 previously applicable to the New Tenant at the Property at the new location for the
23 remainder of the original Lease term.

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26 **Prospective New Tenant Qualifications**

27 Q. Any Prospective New Tenant must have the operational, financial, and
28 managerial ability to operate a Grocery Store ("viability"). The criteria for

1 assessing viability to be used by the parties and the Court shall include, but not be
2 limited to, the following:

3 (1) A Prospective New Tenant has demonstrated that the store will
4 be managed on a Substantially Continuous basis by a person having the experience
5 required by Paragraph VI(O) of this Consent Decree;

6 (2) A Prospective New Tenant has shown a reasonably satisfactory
7 business and credit history. No owner or proposed manager of the New Tenant
8 shall have been convicted of a felony;

9 (3) A Prospective New Tenant has met the State of California
10 Department of Alcoholic Beverage Control's prerequisites for an off- site beer and
11 wine license for the Property;

12 (4) A Prospective New Tenant has demonstrated that it has
13 working capital in hand or committed from a commercial lender in an amount at
14 least equal to the sum of the following:

15 (a) the cost of the initial inventory for four weeks of operation;

16 (b) the purchase of fixtures and equipment not already present in
17 the store;

18 (c) the payment of fees and expenses for all required licenses and
19 permits; plus

20 (d) One Hundred Fifty Thousand Dollars (\$150,000).

21 (5) A Prospective New Tenant has affirmed that it is not an entity
22 controlled by Vons, any parent or affiliated companies of Vons, or any entity that
23 has already purchased, or has executed an agreement to purchase, another Grocery
24 Store located in the City of Avalon; and

25 (6) A Prospective New Tenant has indicated its willingness to enter
26 into a Lease in form and content as attached hereto as Exhibit B, subject to
27 Paragraph VI(H) above.

28 R. The parties and the Court may examine any Prospective New Tenant's

1 business plan for the Property in assessing the qualifications of that Prospective
2 New Tenant.

3 **Special SCICo Consent Decree Termination Provisions**

4 S. If the New Tenant defaults under the Lease after giving effect to all
5 notice and grace provisions under the terms of the Lease, or if the New Tenant
6 exercises a termination right under any provision of the terms of the Lease, this
7 Consent Decree will be terminated as to SCICo and SCICo's use of the Property
8 will not be subject to any restrictions under the Consent Decree.

9 T. Notwithstanding paragraph VI(S) of this Consent Decree, if the cause
10 of the default or reason for the termination by the New Tenant was dishonesty of
11 an employee (but not an owner) of the New Tenant, death or illness of an owner of
12 the New Tenant, or other event beyond the New Tenant's control (which shall not
13 include inability to operate the store profitably because of insufficient sales,
14 inability to control costs or lack of sufficient working capital), or the reason for the
15 termination by the New Tenant was SCICo's breach of the terms of the Lease, then
16 after obtaining possession of the Property, and if more than two (2) years
17 remained of the Lease term immediately prior to termination of the initial New
18 Tenant's Lease, SCICo will then search for another New Tenant to lease the
19 Property for the remaining term of the Lease on the same terms and conditions as
20 those governing the original New Tenant, including Paragraphs VI(A)-(J)
21 governing the search for a New Tenant, Paragraphs VI (K)-(P) governing the lease
22 provisions applicable to the New Tenant, and Paragraphs VI (Q)-(R) governing the
23 qualifications of the New Tenant, subject to the following exceptions: (1) the
24 period of time that SCICo is required to search for a New Tenant shall last only
25 three (3) months and shall commence upon termination of the New Tenant's lease;
26 (2) the advertisements shall run for three (3) consecutive weeks; (3) and SCICo's
27 notice to the Attorney General of acceptable New Tenants as set forth in Paragraph
28 VI(F) shall be given at least thirty (30) days before expiration of the three (3)

1 month leasing period.

2 U. If despite fulfillment of its obligations under Paragraph VI(T) of this
3 Consent Decree, a second New Tenant has not accepted an offer from SCICo to
4 enter into the Lease within the three (3) month leasing period, or if the offer is
5 accepted but the second New Tenant thereafter defaults under the Lease after
6 giving effect to all notice and grace provisions under the Lease, or if the Second
7 New Tenant terminates the Lease for any reason other than SCICo's default, the
8 Consent Decree will be terminated as to SCICo and SCICo's use of the Property
9 shall not be subject to any restrictions under this Consent Decree.

10 V. Unless specified by other provisions herein, this Consent Decree will
11 expire and terminate with regard to SCICo's obligations herein six (6) years from
12 the date of its entry.

13 VII.

14 NOTICES

15 A. Any notice required to be given from/ to the parties hereto shall be in
16 writing and shall be deemed duly given and received upon delivery, addressed as
17 set forth below, by any form of receipted mail or receipted commercial delivery
18 service:

19 To Vons: Robert A. Gordon
20 Senior Vice-President and Secretary
21 The Vons Companies, Inc.
22 618 Michillinda Avenue
23 Arcadia, California 91007-1734

24 To SCICo: John M. Anglin
25 Counsel and Assistant Secretary
26 Santa Catalina Island Company
27 Anglin, Flewelling, Rasmussen, Campbell & Trytten LLP
28 199 South Los Robles Avenue, Suite 600
Pasadena, California 91101-2459

To Attorney General: Emilio E. Varanini, Deputy Attorney General
Antitrust Law Section
State of California Department of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013

B. A party may change its address for notice purposes by notice given pursuant to Paragraph VII(A).

VIII.

RETENTION OF JURISDICTION

A. Jurisdiction is retained by this Court for five years following entry of this Consent Decree, unless specific provisions of this Consent Decree last for a longer period of time in which case this Court shall retain jurisdiction to enforce this Consent Decree with respect to those provisions for their duration, for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

B. In the event that there is a dispute between the parties regarding any term of this Consent Decree, counsel must make a reasonable and good faith effort to resolve the issues before seeking relief from the Court. Counsel contemplating the filing of any motion (the term “motion” including motions, applications, petitions, orders to show cause, and all other proceedings before the Court) shall first contact opposing counsel to discuss thoroughly the substance of the contemplated motion. If the parties fail to resolve the issue, the moving party shall include in the notice of motion a statement to this effect. The parties understand and agree that, notwithstanding the foregoing provision, either party may move for appropriate ex parte relief provided that there is either an actual or reasonably imminent change in the status quo ante that would frustrate the objectives of the Consent Decree or prejudice not attributable to the moving party’s own lack of diligence.

IX.

RELEASE

A. All common law, state, and federal antitrust and unfair competition claims of the State of California in its sovereign capacity that it now has or hereinafter may have against Vons or SCICo, their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees (collectively the “Releasees”), arising from or in any way concerning the 1999 lease of the Vons Express, subsequent renewals and/or extensions of that 1999 lease, and/or, as alleged in the Complaint, the resulting operation of the Property are released. The Attorney General expressly waives the benefit of California Civil Code section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

X.

PUBLIC INTEREST

The Court finds that entry of this Consent Decree is in the public interest.

Dated this day _____, of December 2005

UNITED STATES DISTRICT COURT JUDGE

Presented By:

STATE OF CALIFORNIA, BY:

BILL LOCKYER
Attorney General of the State of California

1 RICHARD M. FRANK
Chief Deputy Attorney General
2 TOM GREENE
Chief Assistant Attorney General
3 KATHLEEN FOOTE
Senior Assistant Attorney General
4 BARBARA M. MOTZ
Supervising Deputy Attorney General
5 EMILIO E. VARANINI
Deputy Attorney General
6 PATRICIA L. NAGLER
Deputy Attorney General
7

8

9

EMILIO E. VARANINI

10 Attorneys for the Plaintiff
STATE OF CALIFORNIA, ex rel
11 BILL LOCKYER

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26 THE VONS COMPANIES, INC., BY:

27

28

1 Robert A. Gordon
2 Senior Vice-President and Secretary
3 The Vons Companies, Inc.
4 618 Michillinda Avenue
5 Arcadia, California 91007-1734

6
7 GREGORY P. STONE
8 Counsel for The Vons Companies, Inc.
9 State Bar No. 78329
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14 Attorney for Defendant Vons, Inc.
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1 SANTA CATALINA ISLAND COMPANY BY:

2

3

4 _____
W. F. Olsen
Group Vice President of Operations
5 Santa Catalina Island Company

6

7

8 _____
John M. Anglin
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